HONOURABLE SRI JUSTICE N.V.RAMANA

WRIT PETITION No. 14040 and 11257 of 2005

DATED: 24-08-2007

Between:

Shaik Subhani and others

…Petitioners

and

Andhra Pradesh State Road Transport
Corporation, Musheerabad,
Hyderabad and another

…Respondents.

HON'BLE SRI JUSTICE N.V.RAMANA

W.P.Nos. 14040 and 11257 of 2005

COMMON ORDER:

In both these writ petitions the petitioners who are employees of APSRTC challenged the final orders issued on 19-4-2005 wherein the Depot Manager of Chirala Depot ordered recovery of amounts on the ground that due to the sudden leave by the petitioners the services of the Corporation were dislocated and cancelled, thereby the Corporation incurred huge loss apart from causing inconvenience to the public. It is also stated in the said order that a show cause notice dated 3-4-2005 was issued calling for the explanation but the petitioners have not submitted their explanations. In the circumstances the 2nd respondent passed final order ordering recovery of the amount from the salary of the petitioners in equal monthly instalments commencing from the salary Bill of April, 2005. Aggrieved by the said order, the petitioners have filed this writ petition.

It is the contention of the learned counsel for the petitioners that the said order is passed without giving any opportunity to submit their explanations and no notice is served on them as contemplated under Regulation 35 A (1) and (2) of the APSRTC (CCA) Regulations.

According to the learned counsel, as per regulation 35 A (1), a communication, notice or order addressed to an employee in pursuance of any action taken or contemplated under these Regulations shall, if practicable, be served personally on him by delivering or tendering to him one of the duplicates of such communication, notice or order. He further contended that under

Regulation 35 A (2), where it has not been found practicable to serve the duplicate communication, notice or order personally, it shall be sent to the last known address of the employee. But without following the procedure and without giving any details as to how the petitioners are responsible for the loss suffered by the Corporation, the present order is passed.

On the other hand, the learned standing counsel for the Corporation submits that the respondents have issued show cause notices to the petitioners and when they refused to accept, the said notices were displayed on the notice board of the Depot which is the usual practice whenever such a situation arises and after that final orders of recovery were passed on 19-4-2005.

Regulation 35 A (1) and (2) which deals with the manner of service of communication, notices or orders on employees, provide thus:

> **35 (A): Manner of service of communication, notices or orders on employees:**
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> (1) A communication, notice or order addressed to an employee in pursuance of any action taken or contemplated under these Regulations shall, if practicable, be served personally on him by delivering or tendering to him one of the duplicates of such communication, notice or order.
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> (2) Where, however, it has not been found practicable to serve the duplicate communication, notice or order personally on the employee, it shall be sent to the last known address of the employee by properly addressing, pre-paying and posting by registered post with acknowledgement due, and unless the contrary is proved, the communication, notice or order shall deemed to have been served on the employee at the time at which the copy so sent is delivered in the ordinary course by post.

In this case, it is the case of the petitioners that no attempt was made by the respondents to serve the notices as per Regulation 35 A

(1) or 35 A (2) of the Regulations. It is not clear from the record that there was any such attempt made by the respondents to serve the notices on the petitioners and the petitioners rejected the same. On the other hand, the respondents contended that they have pasted the notices on the notice board. Pasting of notices on the notice board is not one of the modes of service of communication provided under Regulation 35 A of the Regulations. It is not clear from the records produced by the learned standing counsel for the respondents whether the notices were pasted on the notice board. However the record contains a letter addressed by the ADC to the Depot Manager indicating that they have displayed the notices on the notice board. In view of this, no positive finding can be given whether the notices were pasted on the notice board by the respondents. When the respondents have not been able to serve the communication as provided under Regulation 35 A (1) of the Regulations, they ought to have taken steps to serve the notices by post as contemplated under Regulation 35 A (2). But no such attempt was made by the respondents. Under those circumstances it cannot be said that the notices have been properly served on the petitioners in accordance with Regulation 35 A. Apart from that the petitioners asserts that all the vehicles in the depot are operated normally as per the schedule and there was no inconvenience caused on account of the absence of the employees and that the action on the part of the respondents in unilaterally taking the decision to recover the amounts is illegal and contrary to the powers under APSRTC Regulations.

In the circumstances, I deem it appropriate to dispose of the writ petitions with the following directions;

The final order dated 19-4-2005 passed by the Depot Manager, which is impugned in this writ petition, shall be treated as show-cause notice directing the petitioners to submit their explanation. Accordingly, the petitioners shall submit their explanation to the impugned order which is directed to be treated as show-cause notices

within two weeks time, and upon submission of explanation by the petitioners, the respondents shall consider the same and pass appropriate orders in accordance with law, within a period of three weeks from the date of receipt of a copy of this order.

Accordingly, the writ petitions are disposed of. There shall be no order as to costs.

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N.V.RAMANA, J

24-08-2007
GRR